

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

OFFICE DEPOT, INC.¹

Employer

and

CASE 7-RC-22302

**LOCAL 299, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO²**

Petitioner

APPEARANCES:

C. John Holmquist, Attorney, of Bloomfield Hills, Michigan, for the Employer.
Matthew Broderick, Attorney, of Madison Heights, Michigan, for the Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record³ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

³ The Employer and Petitioner filed briefs, which were carefully considered.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit of approximately 45 full-time and regular part-time delivery service representatives (DSRs), lead DSRs, and DSR assistants employed by the Employer at its facility located at 909 North Sheldon Road, Plymouth, Michigan; but excluding all professional employees, confidential employees, office clerical employees, guards, and supervisors as defined in the Act. The Employer contends that the unit must include about 200 additional transportation and warehouse employees employed at the Plymouth facility. The Employer additionally contends that the unit must include about 18 transportation employees employed as DSRs, lead DSRs, and transportation office employees employed at the Employer's transfer point locations in Flint, Kalamazoo and Grand Rapids. I find that the appropriate unit must encompass all transportation and warehouse employees at the Employer's Plymouth facility, and that the single-facility presumption has been rebutted, which requires that the unit include those employees employed at the Flint, Kalamazoo, and Grand Rapids transfer point locations. There is no history of collective bargaining at the facility with respect to transportation and warehouse employees.

The Employer is a corporation engaged in the retail sale of office supply products. The Plymouth customer service center (CSC) facility is a non-retail warehouse distribution facility responsible for picking, packing, processing, and delivering office supply orders to commercial and contract customers. The Plymouth warehouse contains about 150,000 square feet of storage capacity.

The Plymouth CSC facility includes the operations department, which contains both the transportation and warehouse departments. The transportation department consists of the following employee classifications: DSRs, lead DSRs, DSR assistants (also known as warehouse loader employees), customer service dispatch employees, driver check-in employees, and transportation office employees. The warehouse department consists of the following employee classifications: receiving employees, inventory control employees, picking employees, packing employees, loading employees, driver check-in employees, and reconciliation employees. The Plymouth CSC is part of the Employer's Western region. The Employer's corporate headquarters is located in Delray Beach, Florida, from which all personnel policies for the Western region are established.

The Plymouth CSC facility is headed by Regional Vice President George Kavorkian, who is responsible for all CSC warehouse distribution facilities in the Western region⁴. Reporting to Kavorkian is Clifford Caines, director of operations at the Plymouth facility. Reporting directly to Caines are five managers: John Morrell, senior transportation manager; Pearl Quinnie, administration manager; Bill Roberts, warehouse inventory control manager; Lynne Stone, warehouse receiving manager; and Jonathan Bowen, senior night warehouse operations manager. Additionally, there are four transportation managers who report to Senior Transportation Manager Morrell: Tony Mann, Paula Ratchford, Kevin Cadwell, and Chris Sanchez⁵. Four managers report to Senior Night Warehouse Operations Manager Bowen: Zandra Swanigan, warehouse production manager; John Bowman, warehouse quality assurance manager; Tom Spear, warehouse loading manager; and Charles Akins, warehouse bulk manager.⁶

The primary function of the Plymouth facility is to receive incoming merchandise from vendors; stock and warehouse incoming merchandise; take customer orders; pick and sort orders; pack and load orders; deliver the orders to customers; and unload and store any returned items. Day shift warehouse employees start work around 4:00 a.m. and receive, stock, and inventory incoming merchandise from about 5:00 a.m. to 1:00 p.m.⁷. Afternoon shift warehouse employees pick and pack orders which are conveyed, by machine or conveyor, to the loading dock.⁸ Night shift warehouse employees start work from 7:00 p.m. to 9:00 p.m. and are responsible for loading merchandise orders from the loading dock onto delivery trucks, before the DSRs arrive in the morning to start their routes, for either local deliveries or deliveries going out to the transfer point locations.⁹ Once the appropriate merchandise is loaded onto a delivery truck, the warehouse loader employees drive the trucks into the yard for pick-up by the DSRs later during the day shift.

The DSRs work staggered day shifts starting from 6:30 a.m. to 8:00 a.m. and ending from about 3:30 p.m. to 5:00 p.m. The DSRs are informed by their manager as to which route they will be driving for the day. When the DSRs report to work, they initially pick up their paperwork for the day, which is contained in bins in the warehouse office area and designated by route numbers. The paperwork is placed there during the

⁴ There are about 20 customer service warehouse distribution facilities nationwide, which are divided into an Eastern and Western region.

⁵ Sanchez is the transportation manager over the DSRs and other transportation employees at the Employer's Toledo facility, which the parties agree is not a part of this proceeding.

⁶ The parties are in agreement, and I find, that all the above named individuals are supervisors and/or managers within the meaning of the Act based on their authority either to hire, fire, discipline, or direct employees.

⁷ There are approximately 45 day shift warehouse employees.

⁸ There are approximately 67 warehouse employees responsible for picking and packing orders.

⁹ There are approximately 20 Plymouth warehouse employees responsible for loading orders onto delivery trucks. These warehouse loader employees are also known as DSR assistants and are classified, like the DSRs, as transportation employees. However, the warehouse loader employees report to the warehouse production loading manager.

night shift by DSR assistants/warehouse loader employees. During their routes, the DSRs carry with them their paper work as well as a “palm-pilot” hand-held computer device that stores all delivery orders for the day. The DSRs also carry Nextel two-way radio phones for communication with the facility. The DSRs pick up their phone and keys from either their manager or a lead DSR. They pick up their palm-pilot from the warehouse office area. About one hour after reporting to work, the DSRs report to their loaded delivery truck, which is either parked in the yard or at the loading dock, complete a routine pre-trip inspection of the truck, and leave on their deliveries. On occasion, during busy times, the DSRs may assist in loading a delivery truck. All DSRs are required to possess valid driver and chauffeur licenses.

During their routes, the DSRs maintain continuous contact by Nextel phone with customer service dispatch (CSD) employees, who are responsible for monitoring the work flow of the DSRs, including tracking the progress of their routes, and responding to and resolving any order discrepancies encountered by the drivers while on route. The DSRs may communicate by Nextel with their manager if the CSD employee is unable to resolve an issue. The CSD employees, like the DSRs, are classified as transportation department employees and work staggered day shift hours. However, the record indicates that the CSDs report to Administration Manager Quinnie.

The DSRs return at the end of their shift to do their “driver check-in.” In this regard, the DSRs return the delivery truck to the loading dock, where one of two driver check-in employees¹⁰ will unload and re-stock any returned or undelivered merchandise. Afterwards the DSRs report to the warehouse reconciliation office, located about 60 yards from the loading dock, to turn in any cash or checks picked up while on route to the warehouse reconciliation employees.¹¹ The DSRs turn in their phone, palm-pilot, and keys to the reconciliation employees who are responsible for storing them overnight in a combination safe.

At the Plymouth facility, the Employer employs about six DSR assistants, during the day shift, who are responsible for accompanying and assisting DSRs on their route regarding the delivering and unloading of large delivery orders. The DSR assistants are not qualified to drive delivery trucks. Like the DSRs, these DSR assistants are classified as transportation employees. The Employer also employs a transportation office employee in Plymouth who is responsible for general transportation record keeping and who reports directly to a transportation manager.

¹⁰ The record demonstrates that one of the driver check-in employees is classified as a transportation employee and report either to Senior Transportation Manager Morrell or one of the three Plymouth transportation managers, and one is classified as a warehouse inventory control employee and reports to warehouse production inventory control manager Roberts.

¹¹ There are three warehouse office reconciliation employees that work staggered day shifts starting at 9:00 a.m. and ending at 7:00 p.m.

Plymouth Transportation Manager Cadwell is responsible for overseeing the transfer point employees at the transfer point locations in Flint, Kalamazoo, and Grand Rapids. Cadwell regularly visits the transfer points, about once a week on average. There are three DSRs and one lead DSR employed in Flint; one DSR and one lead DSR employed in Kalamazoo; and seven DSRs, one lead DSR, one DSR/driver check-in employee, and one transportation office employee employed in Grand Rapids. The Flint and Kalamazoo transfer point locations are located in the rear of Office Depot retail stores in those cities. The Grand Rapids transfer point is located in a small building that the Employer leases in Grand Rapids. Each transfer point location has access to a loading dock.

The Plymouth warehouse employees are responsible for loading transfer point loads onto Plymouth trucks for delivery to the transfer point by the Plymouth DSRs. The Plymouth DSRs are responsible for driving the transfer point load to the transfer point location, unloading the load onto the loading dock at the transfer point location, and turning over the appropriate delivery paperwork, which is placed in the Plymouth truck along with the merchandise by warehouse employees, to the transfer point driver. The transfer point DRS then re-loads the merchandise onto another delivery vehicle and performs the assigned delivery work in the transfer point location. The transfer point load contains orders and merchandise which are exclusively generated out of the Plymouth location by Plymouth employees. Like the Plymouth DSRs, the transfer point DSRs similarly communicate with Plymouth CSD employees during their routes regarding delivery route issues. There are hand jacks available for the Plymouth and transfer point DSRs to use for unloading and loading at the transfer point locations. The Plymouth DSRs often have additional merchandise on their trucks to deliver in the same vicinity as the transfer point location on their way back to the Plymouth facility. All transfer point employee personnel files are maintained at the Plymouth facility. The transfer point employees receive orientation along with Plymouth employees at the Plymouth facility.

All of the discussed transportation and warehouse classifications are included in the operations department. Whenever there is a job vacancy for a transportation or warehouse position, the vacancy is posted at the Plymouth facility and transfer point locations and employees from both groups are eligible to apply. Permanent employee transfers have regularly and frequently occurred between the transportation and warehouse groups in Plymouth and between the drivers in Plymouth. Since about 1998, about 20% of the DSRs and DSR assistants have been permanently transferred to warehouse positions, and warehouse employees have transferred to DSR positions. Likewise, there are permanent and regular transfers between the DSRs in Plymouth and the transfer points.

There are also regular temporary transfers between the warehouse and transportation groups. Especially during the back-to-school seasons from August through September and in January, when inventory volume is at its highest level, Plymouth DSRs may be assigned by their managers to work in the warehouse to receive incoming merchandise. Also, Plymouth DSRs may be assigned to work in the warehouse when delivery work is slow or when they are unable to drive. Likewise, warehouse employees are frequently assigned to DSR delivery duties, presumably when the Employer is short of regular DSRs or when driving volume is particularly increased. During the first 7 months of 2002, 31 temporary transfers took place from the transportation department to the warehouse department, and 30 employees were transferred from the warehouse department to the transportation department. There is also some evidence of cross-supervision. Warehouse Loading Manager Spear regularly supervises some of the DSR assistants (also known as warehouse loader employees) and driver check-in employees, who are classified as transportation employees.

All Plymouth and transfer point employees are part of the same payroll system devised by the Employer at a corporate level, which consists of “pay bands” A through E. All of the DSRs, and many of the warehouse and other transportation employees, are similarly contained in pay band D and receive a starting wage rate of \$12.10 per hour. Most of the remaining warehouse employees are included in Band C and receive a starting wage rate of \$10.05 per hour. All Plymouth and transfer point employees are subject to the same step rate pay increase program for new employees up to two years of employment. New employees receive three-month evaluations accompanied by a step rate pay increase until two years of employment. Thereafter, all employees receive annual merit evaluations from their managers with a possible pay raise at the discretion of the manager. All hourly employees at the Plymouth facility and transfer point locations are eligible for bonuses pursuant to the Employer’s quarterly bonus and attendance bonus programs.

All Plymouth and transfer point employees, as well as the Employer’s hourly employees nationwide, are subject to the same associate handbook containing corporate personnel policies and procedures. There are no personnel policies developed or distributed at the local level. The DSRs and warehouse employees do receive separate standard operating procedures outlining their specific job duties and responsibilities. All Plymouth DSRs and warehouse employees punch the same time clock located in the warehouse area. All Plymouth employees share common employee benefits, work entrances and exits, parking facilities, restrooms and break room, lockers, break times, and attend the same annual holiday party. All DSRs and DSR assistants wear Office Depot uniforms. Warehouse employees are not required to wear the same uniforms but are required to wear work clothes consisting of khaki pants, shirt, hat, and black shoes. The DSRs and warehouse employees regularly meet separately with their managers about one to two times per week for “huddle” meetings during which the managers update the

employees regarding general business issues. Other meetings known as “cascade meetings” and “diversity meetings” are less frequently held, about two times a year among all employees to discuss business and employee issues.

The issue to be determined is whether the petitioned-for unit of DSRs and lead DSRs is appropriate. If that unit is appropriate, then the inquiry into the appropriate unit ends. **Boeing Co.**, 337 NLRB No. 24 (2001). If the petitioned-for unit is not appropriate, the appropriateness of the Employer’s broader unit encompassing all transportation and warehouse classifications, as well as the transportation employees employed at the transfer point locations, will be examined. When drivers are involved in a unit determination, the Board has developed certain placement criteria for case-by-case evaluation of community of interest, in recognition of the wide variation in conditions of employment of drivers. **E.H. Koester Bakery Co.**, 136 NLRB 1006 (1962); **Airco, Inc.**, 273 NLRB 348 (1984). In **Koester**, supra at 1011, the Board set forth the following factors to be considered in making unit determinations involving drivers:

- (a) Whether the truck drivers and the plant employees have related or diverse duties, the mode of compensation, hours, supervision and other conditions of employment; and
- (b) Whether they are engaged in the same or related production processes or operation, or spend a substantial portion of their time in such production or adjunct activities.

The drivers must share a sufficiently distinct community of interest from the other employees to warrant a separate unit. **Home Depot USA, Inc.**, 331 NLRB No. 168 (2000). In this case, the weight of the evidence indicates that the drivers share more similarities with, than differences from, the other employees.

The DSRs perform overlapping job functions with other employees and have held other job classifications. Although the DSRs spend a majority of their time away from the Plymouth facility, they nevertheless perform work in the warehouse and in close proximity with the warehouse employees when they are at the Plymouth facility. DSRs are temporarily transferred to warehouse duties when inventory volume is increased, when driving work is at a decreased level, or when they are precluded from driving for any reason, which evidences interchangeability between the two groups and is a significant factor in determining community of interest. **Deaconess Medical Center**, 314 NLRB 677 (1993). Both employee groups comprise the operations department and are an integral part of the Employer’s overall product delivery process. The two employee groups share the same benefits and personnel handbook, and have access to the same work entrances and exits, parking facilities, restrooms and break room, lockers, break times, and attend the same annual holiday party.

Although the DSRs are required to possess valid driver and chauffeur licenses, they are not recognized as being more highly skilled than the other employees as evidenced by their identical pay and benefits to most of the warehouse employees. DSRs, like warehouse employees, are hourly paid, punch the same time clock and receive the same fringe benefits. Moreover, the common bid process allows employees within the operations department to permanently transfer between the two groups. Indeed, in the past four years, a significant number of DSRs and DSR assistants have permanently transferred into warehouse positions and vice versa.

Additionally, there is evidence of cross-supervision in that some DSR assistants and driver check-in employees, who are classified as transportation employees, are supervised by warehouse managers and other DSR assistants and driver check-in employees are supervised by transportation managers. The transportation and warehouse employees further share common supervision in that all of their managers report to the director of operations at the Plymouth facility, who is centrally responsible for labor relations policies and procedures at that facility.

Regarding the Employer's argument that the two transportation office employees employed at the Plymouth facility and Grand Rapids transfer point and the six CSDs employed at the Plymouth facility should be included in the unit, I agree that these employees are akin to plant clerical employees who interests are closely related to those of the transportation and warehouse employees and are appropriately included in the unit found appropriate herein. *Interstate Warehousing of Ohio*, 333 NLRB No. 83, slip op. at 6 (2001); *John H. Hansen Co., Inc.*, 293 NLRB 63, 65 (1989); *Roskin Brothers, Inc.*, 274 NLRB 412, 414-415 (1985); *S & S Parts Distributors Warehouse, Inc.*, 277 NLRB 1293, 1296 (1985); *Jacob Ash Co.*, 224 NLRB 74 (1976).

Thus, based on the foregoing, I find that the unit herein must include all transportation and warehouse employees at the Plymouth facility.

Regarding the Employer's argument that the transfer point employees should be included in the petitioned-for unit, it is presumed that a single facility unit is appropriate for collective bargaining unless it has been so effectively merged into a more comprehensive unit, or is functionally integrated that it has lost its separate identity. *Courier Dispatch Group*, 311 NLRB 728 (1993); *J & L Plate*, 310 NLRB 429 (1993). The burden is upon the Employer to rebut this presumption.

To determine whether the presumption has been rebutted, the Board looks at such factors as bargaining history, the degree of employee interchange, similarity of skills, functions and working conditions, central control over daily operations and labor relations, including the extent of local autonomy, common supervision, plant and product integration, and geographic proximity. *D & L Transportation*, 324 NLRB 160 (1997);

Capital Coors Co., 309 NLRB 322 (1992); *McCoy, Co.*, 151 NLRB 383 (1965). Even if there are many factors supporting a multi-facility unit, the appropriateness of such a unit does not establish the inappropriateness of a smaller unit. *McCoy*, supra at 384.

Applying the foregoing principles, I find the Employer has successfully overcome the presumption that the petitioned-for, single-location unit is appropriate and I conclude there is an overwhelming community of interest to warrant including the transfer point employees in the unit with employees at the Plymouth facility. Despite the somewhat significant geographic separation of the transfer points from the Plymouth facility, the high degree of employee interchange and meaningful contact between the Plymouth and transfer point employees enhances the significance of their functional integration.

The supervision, pay rates, and the function of their employees at all locations are the same. There is centralized administration of wages and benefits, and all employees are part of the same payroll “band” system devised by the Employer at a corporate level. The work and skills of the employees at all locations are essentially the same. Employees from Plymouth interchange with those at the transfer points and they have contact with each other on a regular basis. Like the Plymouth DSRs, the transfer point DSRs regularly communicate with Plymouth CSDs regarding driver workflow, route progress, and resolution of any order discrepancies encountered while on route. All DSR and warehouse job vacancies are posted at the Plymouth facility and transfer point locations, and employees from both groups are eligible to apply. Transfers of Plymouth transportation employees to some of the transfer point locations have taken place. Employee rules, payroll, the ordering of merchandise, and certain other functions are centrally controlled either at Plymouth or on a higher corporate level. See, *Capital Coors Co.*, supra at 325.

Based on the foregoing, I conclude that the appropriate unit must encompass all transportation and warehouse employees within the operations department at the Employer’s Plymouth facility and transfer point locations, and that the unit sought by the Petitioner limited to most but not all of the employees who perform driving functions, and some but not all of the non-driving employees in the operations department, is inappropriate.¹²

Accordingly, for the above reasons, and based on the record as a whole, the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9(b) of the Act:

¹² As the unit found appropriate herein is larger (243) than the unit requested (43), the Petitioner is accorded a period of 14 days from the date of this Decision and Direction of Election in which to submit to the undersigned an additional showing of interest. In the event the Petitioner does not wish to proceed with an election, it may withdraw its petition without prejudice by notice to the undersigned within 14 days from the date of this Decision and Direction of Election.

All full-time and regular part-time transportation and warehouse employees, including delivery service representatives, lead delivery service representatives, delivery service representative assistants, customer service dispatch employees, driver check-in employees, transportation office employees, receiving employees, inventory control employees, picking employees, packing employees, loading employees, and reconciliation employees employed by the Employer at its facility located at 909 North Sheldon Road, Plymouth, Michigan, and its three transfer points located at (1) 3445 Lennon Road, Flint, Michigan, (2) 4425 Westnedge, Kalamazoo, Michigan and (3) 3535 Roger B. Chaffee, Wyoming, Michigan; **but excluding** all professional employees, confidential employees, office clerical employees, guards, and supervisors as defined in the Act.

Those eligible shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 17th day of September 2002.

(SEAL)

/s/ William C. Schaub, Jr.
William C. Schaub, Jr.
Regional Director
National Labor Relations Board
Seventh Region
Patrick V. McNamara Federal Building
477 Michigan Avenue, Rm 300
Detroit, Michigan 48226

Classifications

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